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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/676,722	09/28/00	WILSON	D 12548US02

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EXAMINER

GRIER, L

ART UNIT	PAPER NUMBER
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2644

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DATE MAILED: 08/01/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/676,722

Applicant(s)

WILSON ET AL.

Examiner

Laura A Grier

Art Unit

2644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15-21 is/are allowed.
- 6) ☒ Claim(s) 1,3-5,7-9,12 and 13 is/are rejected.
- 7) ☒ Claim(s) 2,6,11 and 14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

2. **Claims 8-9, and 12-13** are rejected under 35 U.S.C. 102(e) as being anticipated by Iseberg et al.

Regarding **claim 8**, Iseberg et al. discloses high fidelity insert earphones and methods of making same. Iseberg et al.'s disclosure comprises a housing, a receiver, a flexible eartip and a tube nipple, indicative of a rigid tube (figure 2 and col. 2, lines 7-67 and col. 4, lines 1-24).

Regarding **claims 9, and 12-13**, Iseberg et al. discloses everything claimed as applied above (see claim 8). Iseberg et al. discloses the claimed limitations in figure (2).

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 1, 3-5 and 7** are rejected under 35 U.S.C. 103(a) as being unpatentable over Iseberg et al. (U. S. Patent No. 5887070) in view of Schiess et al. (U. S. Patent No. 5265168).

Regarding **claim 1**, Iseberg et al. discloses high fidelity insert earphones and methods of making same. Iseberg et al.'s disclosure comprises a housing, a receiver, a flexible eartip and a tube nipple (figure 2 and col. 2, lines 7-67 and col. 4, lines 1-24). However, the housing and tube nipple of Iseberg et al. fails to specifically disclose the arrangement configuring an obtuse angle between the longitudinal axis and vertical axis of the tube. The examiner maintains that such a structure was well known in the art.

Regarding the structure, in a similar field of endeavor, Schiess et al. discloses a hearing aid. Schiess et al.'s disclosure comprises a housing structure (figure 1) that would enable the arrangement of a tube to configure an obtuse angle between the longitudinal axis and vertical axis.

It would have been obvious to one of the ordinary skill in the art at time the invention was made to modify the invention of Iseberg et al. to provided such a structured configuration of the housing to enable the an obtuse of the tube for the purpose of optimizing the structure of the earphone for the desired function of an insert earphone.

Regarding **claims 3-5 and 7**, Iseberg et al. and Schiess et al. disclose everything claimed as applied above (see claim 1). However, Iseberg et al. further discloses the claimed limitations in figure (2).

5. **Claim 10** is rejected under 35 U.S.C. 103(a) as being unpatentable over Iseberg et al. in view of Schiess et al.

Regarding **claim 10**, Iseberg et al. discloses everything claimed as applied above (see claim 8). However, the housing and tube nipple of Iseberg et al. fails to specifically disclose the arrangement configuring an obtuse angle between the longitudinal axis and vertical axis of the tube. The examiner maintains that such a structure was well known in the art.

Regarding the structure, in a similar field of endeavor, Schiess et al. discloses a hearing aid. Schiess et al.'s disclosure comprises a housing structure (figure 1) that would enable the arrangement of a tube to configure an obtuse angle between the longitudinal axis and vertical axis.

It would have been obvious to one of the ordinary skill in the art at time the invention was made to modify the invention of Iseberg et al. to provided such a structured configuration of the housing to enable the an obtuse of the tube for the purpose of optimizing the structure of the earphone for the desired function of an insert earphone.

***Allowable Subject Matter***

6. **Claims 2, 6, 11, and 14** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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7. **Claims 15-21** are allowed.

8. The following is a statement of reasons for the indication of allowable subject matter: The prior art of record provided support for an insert earphone to be used in hearing aids and/or audiometric testing which comprised a housing, a receiver, a flexible eartip, and a tube nipple. However, prior art of record fails to specifically disclose the second end of the tube nipple located externally to the housing and an acoustic damper located at the first end of the tube nipple of the claimed invention.

### ***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura A. Grier whose telephone number is (703) 306-4819. The examiner can normally be reached on Monday - Friday, 7:30 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Forester W. Isen can be reached on (703) 305-4386. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9314 for regular communications and (703) 872-9314 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-4700.

LAG *LAG*  
July 30, 2001

  
FORESTER W. ISEN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2700